

Daytona's Inc.  
d/b/a Schaad's Pub  
3 Beachway Drive  
Indianapolis, Indiana 46214

RR49-98485  
District 6

## **PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **I. BACKGROUND OF THE CASE**

The Permittee, Daytona's Inc., d/b/a Schaad's Pub, 3 Beachway Drive, Indianapolis, Indiana 46214 (Permittee) is the holder of a type 209<sup>1</sup> Alcohol and Tobacco Commission (ATC) permit, #RR/SS03-93042. On or about August 4, 2003, permittee filed its request for transfer of ownership and that application was assigned to the Marion County Local Board (LB) for hearing. The LB heard the transfer request on February 3, 2004 and on that same day, voted 4-0 to deny the application. The ATC adopted the recommendation of the LB on or about February 17, 2004, and denied the transfer application.

The permittee filed a timely notice of appeal and the matter was assigned to the ATC Hearing Judge, Mark C. Webb (HJ). The HJ assigned the matter for hearing on June 3, 2004. Petitioner failed to appear or otherwise show for the hearing. The HJ took judicial and administrative notice of the entire contents of the file in this matter and now submits his Proposed Findings of Fact and Conclusions of Law to the ATC for consideration.

### **II. FINDINGS OF FACT**

1. Permittee, Daytona's Inc., d/b/a Schaad's Pub, 3 beachway Drive, Indianapolis, Indiana 46214 (Permittee) is the holder of a type 209 Alcohol and Tobacco Commission (ATC) permit, #RR/SS03-93042.
2. Said permit was first issued on February 2, 1999 and has been annually renewed thereafter. (ATC File).
3. On August 4, 2003, permittee filed a petition for transfer of ownership with the ATC, and the matter was referred to the LB for hearing, which set the matter for hearing on February 3, 2004. (ATC File).
4. Permittee corporation, Daytona's Inc., is owned 100% by Sharon Sale, 748 Speedway Woods Drive, Indianapolis, Indiana 46224. (ATC File).

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<sup>1</sup> Beer and wine retailer (restaurant) located in an unincorporated area, thus requiring the gross sale of \$100,000 of food per year over a three (3) year period to continue to hold the permit. *See*, IC 7.1-3-20-12.

5. At the hearing, the LB recommended denial of the petition for transfer on the basis that the prospective permittee's character and reputation were not high enough to hold the permit.<sup>2</sup> (ATC File).
6. Permittee appealed the LB's recommendation to the ATC, which set the matter for hearing on June 3, 2004. (ATC File).
7. Permittee had actual knowledge of the June 3, 2004 hearing before the Commission.<sup>3</sup> (ATC File).
8. Permittee failed to appear or otherwise show for the June 3, 2004 appeal hearing. (ATC File).

### III. CONCLUSIONS OF LAW

1. The Commission shall follow the written recommendation of the LB to deny an application of any type unless, upon review, the Commission determines that to follow the recommendation would be arbitrary, capricious, or an abuse of discretion; contrary to a constitutional right; contrary to statutory authority; or a violation of due process, or unsupported by substantial evidence. IC 7.1-3-19-11.
2. A person appealing from the recommendation of the LB bears the burden of showing that the recommendation of the LB is arbitrary, capricious, or an abuse of discretion; contrary to a constitutional right; contrary to statutory authority; or a violation of due process, or unsupported by substantial evidence. Id.
3. Permittee has failed to show that the recommendation of the LB is arbitrary, capricious, or an abuse of discretion; contrary to a constitutional right; contrary to statutory authority; or a violation of due process, or unsupported by substantial evidence. Id.
4. By failing to appear at the LB and ATC hearings, permittee has declined to participate in the permit appeal process and has waived the right to object to the recommendation of the LB to deny the transfer in this matter.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the finding of the Marion County LB to deny the application for transfer in this matter was not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law and is hereby sustained. And it is further ordered, adjudged, and decreed that the evidence adduced at the ATC appeal hearing was in favor of the decision of the LB and against the applicant and the appeal of Permittee, Daytona's Inc., d/b/a Schaad's

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<sup>2</sup> IC 7.1-3-9-10 provides that "[i]n no case shall a liquor retailer's permit be issued.... if the owner, manager or management of the establishment is not a person of strict integrity and high repute..." It is unclear to this HJ what issues of character and reputation with Ms. Sale the LB had. However, in light of the fact that Ms. Sale failed to appear for the hearing to challenge the LB's recommendation, that issue is immaterial.

<sup>3</sup> The ATC file reflects a letter from the permittee's prior counsel who notified the Commission some 13 days before the hearing that he had withdrawn his representation of the permittee, Sharon Sale, and that she had been notified of the date, time and place of the hearing, as well as an opportunity to timely request a continuance.

Pub, 3 Beachway Drive, Indianapolis, Indiana 46214, for transfer of this Type 209 permit is denied and the application for transfer of said permit applied for is hereby denied.<sup>4</sup>

DATED: \_\_\_\_\_

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MARK C. WEBB, Hearing Judge

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<sup>4</sup> The decision in this case means that the permit reverts back to the prior owner, Knockout, Inc. Because it expired on February 3, 2004, should another transfer be filed, it would need to be accompanied by a renewal petition. *See*, IC 7.1-3-24-2.